

Instruments of Government (Maintained Schools)

Background

All maintained schools must be constituted [under the 2012 Constitution Regulations](#).

Section 20 of the Education Act 2002 requires all maintained schools to have an Instrument of Government. An Instrument of Government is the legal document for Local Authority schools that records the constitution of the governing board and the term of office for each category of governor as well as the name of the school

Part 5 of the 2012 Constitution Regulations makes provision regarding the contents and form of the instrument and the procedure for making and reviewing it.

The governing board or local authority can review and vary the Instrument of Government at any time after it is made.

Indeed, it is good practice for governing boards to regularly review their effectiveness, including the extent to which their size and structure is fit for purpose and their members have the necessary skills.

Reviewing an Instrument of Government Regulations

These are the important things to remember when reviewing the governing board constitution:

Minimum Requirements for all schools

The governing board must not be smaller than seven members (there is no upper limit) and **all governing boards of maintained schools must include**

parent governors	at least two
headteacher	unless the headteacher resigns as a governor
staff governor	one staff governor in addition to the headteacher
local authority governor	one, and only one

Co-opted governors

In addition, the governing board can appoint as many additional co-opted governors as they consider necessary - *as long as* **staff governors, including the headteacher, do not exceed one-third of the total membership** of the governing board.

Additional requirements for foundation and voluntary schools

In addition to these requirements, foundation and voluntary schools are required to have partnership or foundation governors – nominated by the appropriate religious body where the school has a religious character

foundation and foundation special schools with no foundation	at least two (but no more than one quarter of the total) partnership governors
Foundation or foundation special schools with a foundation	at least two (but no more than 45% of the total) foundation governors;
Qualifying foundation schools	Overall control of the GB Majority of <i>up to 2</i> foundation governors over all other categories of governor
Voluntary controlled schools	at least two (but no more than a quarter of the total) foundation governors
Voluntary aided schools	Overall control of the GB Majority of 2 foundation governors over all other categories of governor

Associate members

The governing board can appoint associate members to serve on one or more committees – but these are not governors **and are not recorded on the Instrument of Government.**

The governance structure of maintained school federations

Federation creates a single governing board to govern more than one maintained school.

[The 2012 Federations Regulations](#) mainly mirrors the categories and eligibility criteria set out in the 2012 Constitution Regulations, but there are some differences. **For example:** the governing board of a federation must include the head teacher of each federated school unless any such head teacher resigns the office of governor.

It is strongly recommended that clerks [contact the EES for Schools Governance Support team for advice and guidance](#) if a governing board wishes to federate or a federated governing board wishes to change its Instrument.

Advice to Governing Boards – top tips for clerks

These are the important things to remember when advising the governing board about potential constitution:

- a useful starting point in reviewing the governing board constitution is for the board to carry out a skills audit to identify the skills, knowledge, experience and capacity of current governors and any additional specific skills or experience that the governing board needs to be effective. [EES for Schools Governance Support](#) have examples of skills audits that can be used or adapted
- governors should be able to demonstrate that they have the skills to contribute to effective governance and the success of the school. The majority of Essex maintained governing boards have reduced the number of elected parent governors to two or three – instead they have ensured they have the flexibility to appoint/keep governors with the competencies they need by appointing parents with valuable skills and experience as *co-opted* governors
- encourage governing boards to use the flexibilities available and to consider changing their composition by altering the number of governors required in a particular category in order to build capacity (if the governing board is small), address long standing vacancies or to bring in governors with the desired skills and experience
- hold any governor vacancies until the governing board has agreed on a new constitution. This will give them greater flexibility. For example, the board may agree to reduce the number of parent governors from 5 to 3 – but have just gone out to election for new parent governors!
- another governor cannot simply be slotted into a local authority governor role. [There is a process for the appointment of local authority governors](#)
- if governors are moving into the co-opted category, they must be appointed as such by the full governing board and their term of office will start again
- reviewing the Instrument of Government is a decision of the full governing board – not just the chair. It must be considered by the governing board as an agenda item at a full governing board meeting
- any proposal to change a school name must be determined by a unanimous vote of the governing board and any governor who is unable to be present at the meeting when the vote is taken will be able to vote by proxy. Proxy voting is not allowed in any other circumstances
- remember that changing the Instrument of Government gives the governing board an opportunity to review the term of office for each category of governor. The Instrument may specify a shorter term of office (being at least a year) for a particular category of governor or that the term of office for an individual governor within a category of governor may be between one and four years
- [there is a process for removing surplus governors](#) (p18, B.3) if reconstitution results in more governors in a particular category than is provided for in its Instrument of Government.

Process

These are the key steps to follow when changing an Instrument of Government:

- change of constitution discussed by full governing board
- clerk [submits proposals to EES for Schools Governance Support team](#) (the local authority) to consider whether it complies with legal requirements. This must include minutes of the full governing board (FGB) meeting where the decision was made and a record of who was present (quoracy)
- where a school has foundation governors, the governing board must not submit the draft unless it has been approved by the foundation governors; the trustees of any foundation relating to the school; **the appropriate diocesan authority**; and in the case of any other school designated as having a religious character, the appropriate religious body
- If, for a school that does not have foundation governors, the local authority is not content that the draft instrument of government it must inform the governing board of the reasons and provide the governing board a reasonable opportunity to reach agreement
- If it is not possible for the local authority and governing board to agree on a revised draft the local authority will produce a final draft for the school as they think fit, having regard to the category of school to which the school belongs, and make the Instrument of Government
- EES for Schools Governance Support will arrange for the new instrument to be sealed by the Legal Services team
- EES for Schools Governance Support will email copies of the new instrument to the clerk for distribution to all members of the governing board. The original will be kept on file by EES for Schools Governance Support.

[For further advice and support](#)